IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7345 OF 2004

Office Notes, Office Memoranda of : coram, appearances, Court's Orders: or directions and Registrar Orders:	Court's or Judge's orders

Dr.V.K. Choudhari for the Petitioner.

Mr.Amit Sale with Mr.Thokal for Respondent No.3.

Mr.P.I. Khemani, A.G.P. for Respondents Nos.1 and 2.

CORAM : H.L. GOKHALE, J.

DATE : 6TH SEPTEMBER 2005

P.C. :

1. Rule. Rule is made returnable forthwith.

2. Heard the learned counsel for the parties.

3. The petition seeks to challenge the order passed by the Minister of State for Cooperation on 16th April 2004 whereby he has interfered with the order passed by Respondent No.2 directing the prosecution of Respondent No.3 under section 148(3) read with sections 145(1) and 146(e)(1) of the

Maharashtra Co-operative Societies Act, 1960. The Respondent No.3 was directed to be prosecuted in view of the complaints lodged by the members of the Cooperative Society which he was promoting. The members were ordinary employees of State Transport and the grievance was that their monies were being defalcated and were not being accounted for. The Respondent No.3 had collected the amount for promoting a Co-operative Housing Society and for purchasing the land therefor. The order of Respondent No.2 states that he collected the sum of Rs.7,43,490/-. The amount was not kept in any bank. In any case, all that the officer directed was that Respondent No.3 be prosecuted. The Minister interfered with that order on the alleged ground that Respondent No.3 was not given any opportunity. Dr.Choudhari for the Petitioner submits that Respondent No.3 will get an opportunity before the Magistrate. Mr.Sale for Respondent No.3, on the other hand, submits that he should have been heard earlier.

4. These are matters where the due course is before the Magistrate. All that is decided by the Joint Registrar is only to prosecute Respondent No.3. If he has a good defence, he will be acquitted. In the circumstances, the order passed by the Minister is set aside. The order passed by the Joint Registrar is restored. Respondent No.3 will face the prosecution on the basis of that order.

5. Rule is made absolute as above.

(H.L. GOKHALE, J.)